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EXTENT OF THE GRANDSON'S LIABILITY UNDER HINDU LAW TO PAY HIS GRANDFATHER'S DEBTS.

We propose to discuss in this article the question of the liability of the grandson under the Hindu Law to pay the debts, with interest thereon, of his paternal grandfather.

Whether the liability of the son and the grandson to discharge the debts of the father and the grandfather, respectively, is a purely personal one altogether independent of the question of assets inherited, or whether they are liable only to the extent of assets received, has now been set at rest. Whatever doubts there might once have existed on this point, it has now been settled by a long course of decisions in all the various Presidencies and by the judgments of their Lordships of the Privy Council that the sons and the grandsons are liable to pay the debts of the father and the grandfather only to the extent of assets in their hands or assets received and not accounted for by them. It is, therefore, of little practical interest at this date to discuss the texts of the ancient Smritis bearing on the subject. But the extent of the liability of the grandson for the debts contracted by his paternal grandfather has never yet, except in a solitary instance to which we shall refer later on, been litigated in any Indian Court, and as Indian Courts have to administer the Hindu Law contained in the Smritis in all questions relating to marriage, inheritance, etc., where special legislation or modern case-law has not modified or overruled the views of the ancient Hindu Law-books and as the law of debts has been treated of by all jurists on Hindu Law as intimately connected with, and auxiliary to, the law of inheritance, the question of the *extent* as distinguished from the *nature* of the grandson's liability to his paternal grandfather's debts has still to be considered an

open question to be decided on a correct construction of the provisions of the Smritis on the subject. The liability of the grandson to pay his grandfather's debts with interest has, therefore, to be decided by a consideration of the following points: *i.e.*, (1) Whether under the general rules of Hindu Law on the subject of *Interest on Loans* the grandson is entitled to claim immunity from the payment of the whole or any portion of the interest; (2) whether under any special provision of the Hindu Law the grandson is made liable only to pay the principal of the debt contracted by his grandfather; and (3) whether in either case the immunity or liability is affected by the nature of the loan, *i.e.*, whether secured or unsecured. We shall now proceed to discuss these questions in their order.

Before proceeding at once to do so, we shall first take a glance at the state of the case-law on these points to see if we are justified in discussing these questions at some length. In the first of the two reported cases on the point, *Narasimharav Krishnarav* v. *Antaji Virupaksh* (2 B. H. C. R., 64), the defendant, the grandson of the original debtor, was sued by the plaintiff for principal and interest due. The Bombay High Court, which, as the law then stood in the Presidency, held that the grandson was liable personally to pay the debt of the grandfather independently of the question of assets received, decreed that the grandson was bound to pay only the principal. This ruling which gives absolutely no reasons as observed by the Full Bench of the Allahabad High Court in *Luchman Das* v. *Khunnu Lal* (I. L. R., 19 A., 30,) decided the question in the light of the provisions of Bombay Act VII of 1866, enacted to secure uniformity in all the Presidencies in the matter of the liability of the sons and grandsons to the debts of the father and the grandfather, respectively.

In *Luchman Das* v. *Khunnu Lal, supra,* the plaintiff claimed from the defendant the principal and interest due under a mortgage-deed executed by the defendant's grandfather. The defendant, who had inherited the mortgaged property and was in possession of it, contended that under the Hindu Law the property in his hands was liable only to the extent of the principal secured by the mortgage. Their Lordships (with the exception of *Knox*, J., who supplemented the judgment of his colleagues with a few

observations to which we shall refer later on) in holding the defendant's contention untenable relied upon a number of authorities in support of their view, *i.e.*, *Nanomi Babuasin* v. *Maddan Mohun* (I. L. R., 13 C., 21), *Hanooman Persaud Panday* v. *Mussamat Babooee Munraj Koonweree* (6 M. I. A., 421), and *Girdharee Lal* v. *Kantoo Lal* (L.R., I.A. 321). These decisions, entitled to the highest weight as emanating from the Privy Council, decide the nature of the son's and grandson's liability to the father's and the grandfather's debts respectively, and define the remedies available to the creditors in recovering the debt due to them from the son and the grandson of their original debtors. They do not, as is conceded by their Lordships of the Full Bench, pronounce one way or the other on the *extent* of the liability of the son and the grandson to pay the debt of the father and the grandfather respectively. In fact the points at issue in the several cases cited clearly show that this question did not receive any consideration at their Lordships' hands. All that was decided in those cases and a host of others which followed them was that the creditor was entitled to all the remedies against the sons and the grandsons of the debtor which he could have enforced against the debtor himself. The extent of the liability was a question that never arose in those cases, and it cannot be argued that the word *remedies* which has acquired a technical signification in which it is apparently used in all these decisions, was intended to include what, in legal parlance, is expressed by the phrase—*the extent of the liability.* Their Lordships indeed anticipated this objection and therefore rested their judgment upon the inference that because the creditor had the same remedies against the debtor's sons and grandsons as against himself, the creditor could also recover the whole amount of the debt from them. This reasoning from the sameness of the remedies to the sameness of the extent of the obligation, to our mind, appears questionable.

Again, supposing that the learned Judges were right in holding that the grandson was bound to pay the whole amount that could have been recovered from the original debtor (his grandfather), we still respectfully submit that their Lordships failed to discuss the question whether the debtor himself was always bound to pay the principal and all the interest due, and whether the debtor himself

could not claim the benefit of the rule of Damdupat; for if the debtor himself could contest his liability to pay interest in excess of the amount of the principal, his sons and grandsons could undoubtedly do so *a fortiori.**

The authorities quoted below strongly tend to show that the rule of Damdupat does apply to the case.

On the rate and amount of interest, Manu says: "A lender of money may take in addition to his capital the interest allowed by Vasishtha, *i.e.*, an eightieth part of a hundred, or one-and-a-quarter by the month if he have a pledge" (141). "Interest on money received at once must never be more than enough to double the debt (that is more than the amount of the principal paid at the same time)" (151). "On grain, on fruit, on wool or hair, on beasts of burden, it must not be more than enough to make the debt gain quintuple" (152). Manu, Chap. VIII. Gautama says: "The legal interest on money lent is at the rate of five mashas a month for twenty Kârshâpanas. Some declare that this rate should not be paid longer than a year. If the loan remains outstanding for a long time the principal may be doubled after which interest ceases. The interest on products of animals, on wool, on the produce of a field and on beasts of burden shall not increase more than the fivefold value of the object lent" (Gautama, Chap. XII, 29, 30, 31 and 36). Vishnu says: "On gold the interest shall rise no higher than to make the debt double; on grain, threefold; on cloth, fourfold; on liquid, eightfold; on substances from which spirituous liquor is extracted, on cotton, thread, leather, weapons, bricks and charcoal, the interest is unlimited; on such objects as have not been mentioned it may be double." (Vishnu, Chap. VI, 11—14, 16 and 17). Brihaspati says: "On gold, the interest may make the debt double; on clothes, and base metals, treble; on grain it is allowed to rise to four times the original amount, and so, on edible plants, beasts of burden and wool. It is allowed to make the debt gain triple on pot-herbs, sextuple on seeds and sugarcane and octuple on salt, oil and spirituous liquors. Likewise on sugar and honey, if the loan be of old standing." (Brihaspati, Chap. XIII, 14 and 15). Yâjnavalkya says: "If there be a pledge, the interest shall be an eightieth part by the month; or it may be two, three, four and five in the hundred according to the order of the castes. Those who go to forest shall pay ten in the hundred, and those who go to sea twenty in the hundred, or all in any caste shall pay the interest stipulated by them. The increase on female beasts lent is their progeny; on fluid, their eightfold; on cloth, corn and gold, their fourfold, threefold and twofold, respectively,"

(Yājnavalkya, Chap. II, 37 and 39). Kātyāyana says: "For gems, pearls, and coral, for gold and silver, for cloth made of cotton—the produce of fruit, or made of silk—the produce of insects, or made of wool—the produce of sheep, the interest stops when it doubles the debt. For all sorts of oil and spirituous liquors, for measures of clarified butter, for molasses and salt, the interest is held legal, though with the principal the debts be made octuple" (Colo. Dig., Vol. I, Bk, 1, Chap. 2, LX and LXVIII). Vasishtha says: "Gold, silver and gems may be doubled; grain, trebled; fluids are under the same law with grain; and so, rare flowers, roots and fruits; what is sold by weight, except gold and the like, may make the debt eightfold" (Vasishtha, Chap. II, 44—47). These texts are the most authoritative provisions in Smritis bearing on the subject of the *limits of interest.* There, thus, appears to be no conflict of authorities—a notable feature considering the number of authors—on the maximum amount of interest that could be recovered on money lent. Another important point on which these authorities are unanimously clear is that while the maximum amount of interest is seen to vary with the objects lent, it is altogether independent of the kind of loan, *i.e.*, whether it is a simple loan or a hypothecation or a mortgage. While the *rates* of interest are allowed to vary with the caste of the debtor and his occupation and while the maximum amount of interest as determined by its proportion to the principal varies with the description of the object lent, neither the rate nor the maximum amount varies with the loans classified according to their *nature.* This is an argument by implication that the maximum amount of interest on money lent with or without a pledge, with or without sureties, etc., is the amount of the principal. But the Smritis also contain express provisions on this point.

Narada sub-divides the chapter on *Debts* into twenty-six topics and in treating of the sixth topic propounds his rules regarding the rate, and the maximum amount of interest on loans in general. This portion contains definitions of the different kinds of interest, and no class of loans is exempted from the operation of these provisions. In the eighth subdivision of the chapter he defines and distinguishes the different kinds of pledges and mortgages and says nothing of the rate or amount of interest in respect of them. This method of treatment clearly indicates that the general provisions regarding rates and amount of interest apply to cases of mortgages.

Brihaspati begins his chapter on 'The Law of Debt' with the verse "A creditor should never lend money without having first secured a pledge of adequate value or a deposit or a trustworthy surety; nor

without a bond written (by the debtor himself) or attested (by witnesses)." Here is an express warrant for saying that the provisions which follow apply to money lent on pledges. Again, the same author enumerates and defines six kinds of interest, to the last of which he gives the technical name of *Bhôgalâbha* or interest realized by enjoyment of the mortgaged house or produce of a field. (Brihaspati, Chap. XI, 5—8). Again, the same author in the portion of the chapter dealing with mortgages says: "Should the creditor actuated by avarice use a pledge before interest has ceased to accrue on the loan (on becoming equal to the principal), such use shall be stopped." . . . . "When the time for payment has passed and interest has ceased (on becoming equal to the principal), the creditor shall be owner of the pledge; but till ten days have elapsed, the debtor is entitled to redeem it" (Brihaspati, Chap. XI, 18 and 25). Manu also after laying down provisions regarding rates of interest and certain rights and liabilities arising from various kinds of pledges says: "In money transactions, interest paid at one time must never be more than enough to double the debt." (Manu, Chap. VIII, 151). Vishnu says: "The pledge must also be restored to the debtor when the interest has reached its maximum amount (on becoming equal to the principal) and has been paid." (Vishnu, Chap. VI, 7). Yājnavalkya begins his chapter on the "Law of Debt" with the verse, "An eightieth part shall be the interest by the month on a loan with a pledge. In other cases, *i.e.*, on loans without a pledge the interest shall be two, three, four or five in the hundred in the order of the different castes"; and after enumerating the circumstances under which higher rates of interest would be allowable says: "The highest accumulation of debt (principal and interest) is four times, three times and twice the principal on loans of clothes, grain and gold, respectively." (Yājnavalkya, Chap. II, 39). Yājnavalkya says: "Whenever a mortgage-debt becomes doubled by interest, then the pledge shall be returned whenever double the sum lent has been received." (Yājnavalkya, Chap. II, 64). It is thus clear that all Smritis of note expressly and by implication lay down that the highest amount of interest cannot exceed the principal, and that this rule of Damdupat applies as well to mortgages as to unsecured loans.

The case-law on the subject is also clearly in support of the applicability of the rule of Damdupat to cases of mortgages and pledges, ever since the decision of the Bombay High Court in *Nathubai* v. *Mulchand* (5 B. H. C. R., 196) which overruled a prior decision of the same High Court in *Narayan* v. *Gangaram*, (5 B. H. C. R., 157.) The overruling decision laid down that in all cases of mortgage where

no accounts of rents and profits accruing from the mortgaged property were to be taken, the rule of Damdupat was applicable and that where such accounts were to be taken the rule of Damdupat did not apply. This decision was followed in its entirety till *Telang*, J. in *Shai Ganesh Dharnidar* v. *Keshavrai* (I. L. R., 15 B., 625) pushed the principle of the decision in *Nathubai* v. *Mulchand* to its most legitimate consequences and ruled that the rule of Damdupat was alike applicable to cases of mortgage where at the final payment the interest exceeded the amount of the principal, though accounts of the rents and profits accruing from the mortgaged property were to be taken under the provisions of the deed of mortgage. He held that the effect of the decision in *Nathubai* v. *Mulchand* was only 'to prevent the rents and profits being deducted from the amount so doubled.' This decision of *Telang*, J., was, however, subsequently overruled by the Full Bench decision of the same Court in *Gopal Ramachandra Limaye* v. *Gangaram Anand Shet*, I. L. R., 20 B., 721. For the purpose of this article it is immaterial to consider whether the decision of *Telang*, J., was rightly overruled by the subsequent Full Bench decision; for whether the former or the latter is the correct law, it is now settled that the rule of Damdupat applies to all loans and that mortgage-debts *as mortgage-debts* are not exempted from the operation of the rule,-the conflict of decisions turning upon the provisions of the mortgage instrument and not upon the fact of the debt being a mortgage-debt.

But apart from the rule of damdupat let us consider whether the grandson, as such, could under any special provisions of Hindu Law claim immunity from payment of all interest due on the grandfather's debt.

Now on the subject of the grandson's liability to pay the grandfather's debt, Yājnavalkya says: "The father being absent in a foreign country or deceased or wholly lost in vice, the sons or their sons must pay the debt; but if disputed, it must be proved by witnesses" (Yājnavalkya, Chap. II, 50). Vishnu says: "If the debtor die, become a sanyasin, or remain in a foreign country for twenty years, the debt shall be discharged by his sons or grandsons, but not by remoter descendants against their will." (Vishnu, Chap. VI, 27). Brihaspati says: "The father's debt must be paid first and next a man's own debts; but, even before these two the paternal grandfather's debt must be paid" (Brihaspati, Chap. XI, 48). Nārada says: "The father being dead, the sons, whether after or before partition, shall discharge his debts according to their

shares, or that son alone shall pay who manages the family estate. The debt of the grandfather inherited by the sons and left unpaid by them should be discharged by the grandson. The liability for it does not affect the fourth in descent" (Narada, Chap. I, 2 and 4). Kātyāyana says, "The father being dead, the debts of the grandfather should be carefully discharged by the grandsons." (Cole. Dig., Vol. I, 208, cxcviii). Side by side with these and other texts which cast upon the grandson the liability to pay the grandfather's debt, the following texts limit such liability to the amount of the principal debt:—"The father's debt when proved must be discharged by the sons as if it were their own, the grandfather's debt must be paid by the grandsons *without interest*; but the son of a grandson need not pay it at all." (Brihaspati, Chap. XI, 49). "Bhrigu declares that the grandfather's debt proved and admitted by the father must be discharged by his grandsons, if not contracted for immoral purposes, or already paid by the sons. The same rule applies to the debts of the grandfather not discharged by other grandsons or his own sons; but a debt of the grandfather shall be paid by his grandsons *without interest*" (Cole. Dig., Vol. I, 207, cxcvii). It is unnecessary to observe that, according to the rules of interpretation applicable to Hindu Law, the liability imposed upon the grandson by the former set of texts is limited by the latter, especially when we consider that the authors of the latter are both among the authors of the former. It should also be noted that this limitation of the grandson's liability is recognized by the author of the Vyavāhāra Mayukha and the author of the Mitakshara (Mandlik's Translation of Vya. Mayu., page 113, and Vijnanesvara's commentary on Yājnavalkya, Chap. II. 50). The observation of their Lordships, therefore at page 30 I. L. R., 19, A. that the texts of Vishnu and Yājnavalkya do not place any such limit on the extent of a grandson's liability, but treat the liability of the son and the grandson to discharge the debt of their ancestor as co-extensive, is unsupportable, not only on a consideration of other texts, but also in the light of Vijnānesvara's commentary upon the text of Yājnavalkya above quoted. The Full Bench decision in *Luchman Das* v. *Khunnu Lal* can hardly be supported therefore upon this line of reasoning adopted by their Lordships. There, however, remains to be considered the one argument by which *Knox* J., in the above case supplements the arguments of his colleagues.

Regarding the text of Brihaspati on which the respondents in *Luchman Das* v. *Khunnu Lal* relied as limiting the grandson's liability to the principal only of the grandfather's debt, *Knox* J., observes : " A closer examination, however, of the passage quoted from Brihaspati shows that the contention rests upon insufficient grounds. Brihaspati divides the chapter in which he deals with debt into three portions. The first portion (slokas 1—38) deals with money lent on the security of pledges or deposits; the second (slokas 39—53) is devoted to money lent upon trustworthy sureties. The remainder of the chapter is taken up with recovery of money lent. If the case before us falls under any portion of the chapter, it would fall under the first portion—. . . . . . The sloka upon which the learned counsel for the respondents relies is one which deals with debts not secured, and in the absence of any contrary expressions it must and should be held to have reference to that class of debts alone." (I. L. R., 19 A., 34). In the first place the chapter on debt is not divided as indicated by his Lordship. Slokas 1—16 define the various rates of legal interest and limit the maximum amount of interest recoverable on loans with reference to the objects lent. Slokas 17—38 are taken up with defining various kinds of pledges, the consequences of loss or deterioration by use of objects pledged, the rights and liabilities of successive mortgagees of the same property, etc. Slokas 39—46 speak of the various kinds of sureties, of their order, and of the circumstances under which they become liable to pay the debt and of the difference in the extent of the obligations arising from the different kinds of suretyship. The rest of the chapter treats of the liability of the son and the grandson of the debtor, of the successor to the estate of the deceased, etc. Now the word 'loan' in sloka 46 is a general term and comprehends both secured and unsecured debts, and money lent upon a pledge or trustworthy surety is as much a loan as a simple loan. Speaking of money lent on a pledge (which according to sloka 17 may be either movable or immovable) the author in sloka 18 says : " Should the creditor actuated by avarice use a pledge before interest has ceased to accrue on the loan," where clearly the word *loan* denotes a mortgage-debt. Again, whether the debt be secured or unsecured, the words *loan, creditor,* and *debtor* are used indifferently in respect of both kinds of debt, and the terms mortgage debt, mortgagee and mortgagor are not used to distinguish secured debts from unsecured debts. (*Vide* Slokas 18, 21, 22, 25, 32).

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Again, if *Knox*, J., were right in his view of the bearing of the text relied on by the counsel for the grandson, startling anomalies would have to be subscribed to. If the portion beginning from sloka 46 and ending with the chapter related only to unsecured debts, it would then follow that a mortgagee cannot pursue the debtors or his sons or grandsons or heirs for the recovery of the mortgage debt. It may be said that he could realize his debt by proceeding against the mortgaged property. This would be a hardship to the creditor, as such a course is only one of the remedies allowed him by law. But, supposing for a moment that there is not much harm in compelling the creditor to pursue that remedy and that remedy alone, what remedy has he in respect of any balance due to him under the mortgage left after debiting the whole proceeds of the sale of the mortgaged properties in reduction of his debt? He cannot proceed against the debtors' person or other properties in his hands or in the hands of his sons and grandsons or other heirs; for according to *Knox*, J., the liability cast upon these persons by the last portion of the chapter is in respect of unsecured debts alone. This legitimate consequence of the view of his Lordship is inconsistent with the spirit of Hindu Law and deprives the mortgagee of rights which have always been recognized by jurists and judicial tribunals. Again, the immunity of sons, grandsons and other heirs from the obligation to pay the ancestor's debts when contracted for immoral or illegal purposes is laid down in sloka 51 of the chapter, and if the view of *Knox*, J. were correct, the sons and grandsons of the mortgagor cannot impeach a mortgage created by their ancestor for illegal or immoral purposes—a result which is repugnant to the recognized principles of Hindu Law.

We are thus constrained to express our dissent from the reasoning employed and the conclusion arrived at by their Lordships in the matter of the grandson's liability to pay the interest on his grandfather's debt and to hold that the grandson is bound to pay his grandfather's debt only to the extent of the principal, and that if he were compellable to pay interest, he would be entitled to the benefit of the rule of Damdupat.

A PLEADER.

TRANSLATED FROM THE VIVADARATNAKARA.]

CHAPTER IV.

Partition Among Sons of The Same Father by Different Mothers.

On this subject, Manu says; "If there be a doubt as to how the division should be made in the case where the younger son is born of the senior wife and the elder son of the junior wife, there the son of the senior wife shall take as his additional share one bull, and the next best bulls shall form the portion of those who are inferior on account of their mothers." (1) *Commentary.*—The doubt herein expressed arises only in the case where the other sons are born of mothers equal in class with the son of the senior wife, as the mode of partition among brothers of different castes will be dealt with later on. The word '*Pūrvaja*' denotes the son, though younger born, of the wife first married. The meaning of the first portion of the last verse is, " all bulls next best to the one most excellent bull given to the younger son by the first wife." '*Inferior*' means 'born of mothers married after his own mother.' Having thus explained seniority with reference to the mothers, the author points out a further distinction in the same case. "But the eldest son born of the eldest wife shall take as his additional share sixteen with the bull and then the other sons may take shares according to the seniority of their mothers. This is the established rule." (2) *Commentary.*—The word '*Vrishabhá Shodasah*' means 'cows whose number makes sixteen with the one bull.' This deduction indicates the extreme equality in caste of this son. The rest owing to their mothers being juniors take each one bull next best. Prakāsakāra says that Manu is here stating the views of others as he has already declared his own view that seniority of sons depends upon the order of their births and not on the seniority of their mothers. Halāyudha, however, interprets these texts of Manu as follows:—"Where the younger son is born of the senior wife and the elder of the junior wife, there the elder son born of the junior wife shall take as his additional share one most excellent bull. The other bulls which are inferior to this shall be taken by the elder sons born of senior wives, one each according to the relative inferiority of their mothers. The rest shall be divided equally.

(1) Manu, Chap. IX, 122 & 123.

(2) Manu, Chap. IX, 124.

But where the eldest son is born of the senior wife, there Manu points out a special distinction in verse 124. He shall take fifteen cows and one bull as his additional share. The other sons shall, according to the rank of their mothers, each take, as previously mentioned, one bull."

On this point, Gautama says: "The additional share of the eldest is one bull; but if born of the first wife, he shall take fifteen cows and one bull, or let the eldest son share equally with the younger born of the first wife." (1) *Commentary.*—The term '*eldest*' means 'the elder son of the junior wife according to Manu.' The word *Jyeshtinēyah* means the eldest son born of the senior wife. The word *Samadhá* means 'equally.' This rule applies where all the sons are of equal class.

Sankha and Likhita say: "One bull to the eldest as his additional share and the house to the younger." (2) *Commentary*—Here also the word '*eldest*' means the elder son born of the junior wife according to Manu.

Gautama says: "Let the special shares be adjusted among each class of sons according to their mothers." (3) *Commentary*—The meaning of this is as follows: Where there are several wives of the same class and where each has several sons equal in number, then, as this special rule of division is not easily workable, the estate should be divided according to the mothers and the special rule of deduction of one-twentieth share, etc., should be applied among sons by the same mother.

Brihaspati says: "Where there are many sons sprung from the same father, born of different mothers, equal in caste and number, division should be legally made into shares according to the mothers. But where equal in caste but varying in number, then the division should be according to males." (4)

Vishnu says: "Sons who are equal in caste shall take equal shares. The best part shall be given to the eldest as his additional

(1) Gautama, Chap. XXVIII, 14, 15 & 16.
(2) Cole. Dig., Vol. II, 216, XLIII.
(3) Gautama, Chap. XXVIII, 17.
(4) Brihaspati, Chap. XXV, 15 & 16.

share." [1] *Commentary*—This rule applies where the number of sons by different mothers varies.

Manu says : "But there is not this deduction of the one out of ten among brothers equally zealous in their duties; some trifle only need be given to the eldest just to promote the feeling of respect." [2] *Commentary*—The meaning of this text is this:—When the brothers are equally skilled in the recitation of the Vedas, etc., the deduction of one best among ten should not be allowed. This deduction of one best among ten is here used as an indicative illustration. All kinds of deductions are hereby countermanded, because it is said 'some trifle need only be given.' However, something to show respect for the mere fact of the seniority of birth should be given. But where there is a difference between the sons in respect of the possession of good qualities also, Manu states the opinion of others in his verses already cited and not concurring in their view, he enunciates his own view in the verse 'among brothers born of wives of equal class, etc.' As otherwise there would be a contradiction, the other rule has been overruled. As the special rule applies where there is a difference in good qualities and behaviour, it is only fair that the other view should be overruled when his own view has to be enunciated as the conclusive one. Lukshmīdhara holds that the younger son born of the senior wife is alone entitled to the deduction on account of seniority and Pārijāta also concurs in this view. Manu says: "Even in Swabrahmanyâs, invocation is made according to seniority of birth. Seniority among twins conceived at the same time is also considered to depend on seniority of actual birth." [3] *Commentary*—Swabrahmanyâs is the name of a particular mantra recited by Chandogyas during Jyotishthoma sacrifice. The plural number is used, because it is often repeated. There the father is invoked as the father of his eldest son; *e.g.*, "the father of Amuka, the grandfather of Amuka is performing the sacrifice." The Natasutra says that seniority by birth is thereby indicated as also from the text 'the eldest of such of the male and female issue as are alive.'

Devala says : "Seniority is determined among brothers beyond the pale of castes by behaviour, and among twins, by priority of

(1) Vishnu, Chap. XVIII, 36 & 37.
(2) Manu, Chap. IX, 115.
(3) Manu, Chap. IX, 126.

actual birth. Of brothers born twins, he whose face is first seen by the parents is established to be the elder." (1)

Manu says: "The eldest brother who out of avarice deceives his younger brothers ceases to be the eldest. He shall have no share and shall be chastised by kings." (2) *Commentary*—The word '*vinikurvêta*' means 'should deceive.' 'Ceases to be the eldest' means 'becomes unworthy of being respected like the eldest.'

Accordingly, Manu says: "Where these deductions are made, the shares should be made equal; but if no such deductions are made, the allotment of shares shall be made in the following manner:—The eldest shall take one share in excess, the next younger shall take a share and a half, the rest one share each. Thus has the law been settled." (3) *Commentary*—'One share in excess' means 'two shares.' The next younger shall take a share and half a share more. The rest shall take each a share. This rule applies where division is made without making a deduction. This rule again applies only where the eldest brother and the next younger to him are possessed of excellent qualities and learning and the rest have no good qualities, agreeably to the text of Brihaspati regarding the eldest son. 'The brother eldest by birth, good qualities and learning shall take two shares of the heritage, and as the same reasoning applies to the one next younger to him, it must be understood that the deduction of a twentieth share, etc., obtains where all the brothers possess good qualities and good behaviour; but where there is some difference of degree in the possession of these, Gautama says: "Or let the eldest have two shares and the rest one each." (4) *Commentary*—This rule applies where the eldest alone excels in good qualities and the rest are devoid of any. Accordingly, Gautama says: "Or let them each take one kind of property, (selecting) according to seniority what they wish for; 10 head of cattle." (5) *Commentary*—The meaning is that they shall take ten cattle each of the same class, in the order of seniority.

Gautama adds: "But none shall take ten one-hoofed beasts or slaves." (6) *Commentary*—The meaning is that none shall take ten

(1) Cole. Dig., Vol. II, 231, LXV.
(2) Manu, Chap. IX, 213.
(3) Manu, Chap. IX, 116 & 117
(4) Gautama, Chap. XXVIII, 9 & 10.
(5) Gautama, Chap. XXVIII, 11 & 12.
(6) Gautama, Chap. XXVIII, 13.

of one-hoofed animals like horses, or of bipeds such as slaves, etc. This rule applies where all are equal and there are many animals to divide.

Vasishtha says: "Now, partition of the estate among brothers. Let the eldest take a double share and one out of ten kine and horses. The goats and the house belong to the youngest; black iron, utensils and furniture to the middlemost." (1) *Commentary*—The meaning is, the eldest shall take two shares and one most excellent of every 10 cows and horses. This text of Vasishtha applies where the eldest excels in good qualities and the other two are also possessed of good qualities.

Narada says: "A larger share shall be given to the eldest son and a smaller to the youngest; the rest shall take equal shares, and so an unmarried sister. This rule also applies to *Kshetraja* sons lawfully begotten upon the wife." (2) *Commentary*—Prakāsakāra, however, reads 'a large share to the best' instead of 'a smaller to the youngest' occurring in this verse. He comments upon his own reading and says that the first-born son takes two shares and the best, *i.e.*, the son who is engaged in the management of domestic concerns should be given something excellent. 'And so an unmarried sister' means that she shall also be entitled to a share. This is the mode of division among *aurasa* sons. The mode of division among *Kshetrajas* will be next explained. The mode of division pointed out among *aurasa* sons will also apply in the case of *Kshetrajas* where these *Kshetrajas* are lawfully begotten, *i.e.*, where they are begotten upon the soil lent by the impotent, etc., to his *Sakulya* or one of his own caste. Even among such *Kshetrajas* the larger share allowed to the eldest should be given. It may be asked how there can be many Kshetraja sons of one man? The answer is that the text applies to Kshetraja sons born twins.

As to the qualifications of the eldest son who is entitled to a larger share, Brihaspati says: "He who is the first by birth, learning and good qualities shall take two shares of the heritage; the rest share equally; for to them he is equal to a father" (3).

Usanah says: "The mode of division among *anuloma* castes has been declared. But the mode of division among brothers alike

(1) Vasishtha, Chap. XVII, 40, 42, 43, 44 & 45.
(2) Narada, Chap. XIII, 13 & 14.
(3) Brihaspati, Chap. XXV, 9.

born of the same father will be pointed out." (1) *Commentary*—Namely, among all sons equally devoid of good qualities; thus even where one is possessed of good qualities, if all acquire different kinds of property, then they shall divide equally. This is the meaning.

Yājnavalkya says: "Let the sons divide equally the wealth and the debts of their father after his death." (2) Also "But where the common wealth is improved by the efforts of one of the brothers, the law is that division should be equal; but among sons of different brothers the allotment of shares is according to the fathers." (3) *Commentary*—The first portion is an exception to the rule of Vasishtha that he who acquires property shall take two shares. When common property is considerably improved by one of the brothers by good husbandry, etc., then that property shall be equally divided and the person who improves shall not take two shares. This is the meaning. The rule of Vasishtha should be understood to apply to cases other than this. Where the property of the grandfather has to be divided among sons of different brothers, whether equal or unequal in number, they (together) take the share which their father would have taken. But each should not take a share.

On the same subject, Brihaspati says: "Whatever has been jointly acquired by all, they shall divide equally. Their sons, whether equal or unequal in number, are declared entitled to the shares of their father." (4) *Commentary*—Sons unequal or equal in number whose fathers had not divided are here meant.

Kātyāyana says: "Where the son dies undivided, his son that had received no means of livelihood from the grandfather should be made his heir. He shall receive his father's share from his paternal uncle or the son of the latter. The same share shall legally belong to all the brothers; or even his son shall receive it. It shall not lapse." (5) *Commentary*—Where among brothers one dies, then the share of his son shall not lapse.

(1) Cole. Dig., Vol. II, 234, LXXII.
(2) Yājnavalkya, Chap. II, 117.
(3) Yājnavalkya, Chap. II, 120.
(4) Brihaspati, Chap. XXV, 14.
(5) Cole. Dig, Vol. II, 241, LXXIX.

Devala says: "Among co-parceners living together undivided or divided, there shall be a subsequent division of heritage extending to the fourth degree. This is settled."(1) *Commentary*—The meaning is this:—Among co-parceners, whether undivided or re-united after division, the subsequent partition extends only to the brothers, their sons and the sons of these. To the sons of the last mentioned the partition does not extend.

The same author says: "Men of the same *gotra* are *sapindas* only to that extent. After them there is a difference of *pinda*. Sages intend that partition of heritable property should be co-extensive with *sapinda* relationship."(2) *Commentary*—This applies also to the property of which one wishes for a partition when it is not enjoyed by him but is enjoyed by another living in the country in which the property is situate.

Vasishtha says: "Now, partition of estate among brothers. It shall be delayed till childless women bear sons."(3) *Commentary*—'Women' here means 'wives of brothers.' If they are supposed to be pregnant, shares should be given them also. If no son is born, brothers alone shall divide and the women should only be maintained.

Vishnu says: "Mothers shall take shares proportionate to their sons' shares and so shall unmarried daughters."(4) *Commentary*—From the use of the plural 'mothers,' as every one is a mother, and as there is no warrant for understanding it in the singular number, all mothers are entitled. Or it may mean that shares are reduced according to the descending order of the castes of their mothers agreeably to the text that mothers take shares proportionate to those of their sons. Where there is only one mother the whole text is easily understood. So says Grihēsvara also.

Yājnavalkya says: "Of brothers who divide after their father's death, even the mother takes an equal share."(5)

Brihaspati says: "In default of him (the father), the mother takes a share equal to that of a son. Their mothers take equal

(1) Cole. Dig., Vol. II, 242, LXXXI.
(2) Cole. Dig., Vol. II, 243, LXXXII.
(3) Vasishtha, Chap. XVII, 40 & 41.
(4) Vishnu, Chap. XVIII, 34 & 35.
(5) Yājnavalkya, Chap. II, 123.

shares and a maiden takes a fourth share"(1) *Commentary*—The word 'mother' first used, means 'the mother of living sons.' The word 'mothers' means 'wives of the father having no issue.' 'A fourth share' means 'a fourth of the share which a son of that class would be entitled to.' This must be given for the performance of sacraments. As for the text of Vishnu that the mothers take shares proportional to the shares of their sons, as also unmarried daughters, that rule also in the light of this text must be understood as allowing this one-fourth share, as this text also is intended to refer to unmarried daughters.

Vyāsa says: "All the sonless wives of the father are also declared entitled to take equal shares, and all paternal grandmothers are declared equal to mothers."(2).

Brihaspati says: "All sons shall share alike their father's wealth. But he who possesses learning and virtue deserves a larger share than the rest. Fathers are fathers by virtue of that son whose fame fills the world for learning, discernment, valour, knowledge, liberality and virtue."(3)

Nārada says: "He who, zealous about domestic concerns, looks after them shall be supported by his brothers, with food, raiment and vehicles."(4) *Commentary*—Halāyudha comments upon this text as meaning that where one of the brothers, owing to his own ability, does not take a share, partition should be made after giving him some trifle in order that his sons may not subsequently dispute; and in support of his construction of this text quotes by way of introduction the passage of Manu which says: "Where of brothers, one being able in his occupation does not wish for a share, he must be given some little portion for livelihood and separated from them."(5) Prakāsakāra on the other hand interprets the passage thus:—Where brothers living jointly and having paternal wealth earn more by their own husbandry, and where one of them earns nothing, he should not be given the increase proportionate to his share of the paternal wealth employed by them in trade; but

(1) Brihaspati, Chap. XXV, 64.
(2) Cole. Dig., Vol. II, 243, LXXXIV.
(3) Brihaspati, Chap. XXV, 10 & 11.
(4) Narada, Chap. XIII, 35.
(5) Manu, Chap. IX, 207.

there is no prohibition against his being given his share of the capital. Even then there shall not be a regular partition. He must be given something for his livelihood. After reserving to themselves a share for their own trouble, the residue alone shall be given him.

As a limitation to the alternatives propounded in the rule: "Let the eldest take a larger share, or let all the brothers share equally," Yājnavalkya says: "One able and not wishing for a share shall be given some trifle and separated."(1) *Commentary*—Here also Prakāsakāra says: "Something though trifling should be given him and he should be separated in order that his sons may not afterwards quarrel about it."

Thus ends the chapter on "Partition among brothers by different mothers."

CHAPTER V.

On persons excluded from inheritance.

On this subject, Āpastamba says: "All virtuous sons inherit. But let him be made portionless, though the eldest son, who spends money unrighteously."(2) *Commentary*—'Spends' here means 'wastes.' 'Unrighteously' means 'in gambling and like pursuits inconsistent with the order of his life.' 'Portionless' means 'deprived of his share to the extent of money wasted by him.' Some say that he should altogether be disinherited.

Gautama says: "Even the son born of a wife of equal caste, if addicted to vice, gets no share."(3) *Commentary*—The word 'even' shows that the rule applies with greater force to sons born of wives of different castes. So says Achārya. Prakāsakāra says that this text lays down an alternative in view to the fact that sons though so addicted to vice can be reclaimed from sinful ways.

On this subject, Manu says: "All brothers who are addicted to doing forbidden acts are unworthy of property."(4) *Commentary*

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(1) Yājnavalkya, Chap. II, 116.

(2) Apastamba, P. II, P. 6, K. 14, 14 and 15.

(3) Gautama, Chap. XXVIII, 40.

(4) Manu, Chap. IX, 214.

—'To doing forbidden acts' means 'to gambling and the like.' Others say that this expression means 'to committing waste upon family property.'

Sankha and Likhita say: "He who has been formally degraded loses his rights to inherit and to offer oblations of food and libations of water."(1) *Commentary*—'Formally degraded' means 'expelled from caste after breaking the pot by relatives for treason and other heinous offences.'

Brihaspati says: "Though born of a wife of the same caste, a son devoid of good qualities does not deserve the paternal wealth. It is said to go to those learned men who offer rice balls to him. A son is he who redeems his father from debts superior and inferior. Therefore, there is no good having a son who is not of that description. What end can be served by a cow which yields no milk and is not pregnant? What purpose is served by a son who is neither learned nor virtuous? A son who is devoid of learning, valour, wealth, devotion, knowledge and virtuous conduct is equal to urine and excrements." (2) *Commentary*—'Devoid of good qualities' is explained by the author himself in the succeeding portion. The expression 'Tatpindadah' means 'those who give the son devoid of good qualities, food and raiment.'

Manu says: "Eunuchs and outcasts are not entitled to share; so also persons born blind or deaf, the insane, the idiot and the dumb as well as those who are wanting in one organ. But it is just that even to these food and raiment should be given without stint by the intelligent. Those that refuse to give will become degraded. If the eunuch and the rest somehow desire to marry, the offspring of such wives deserves a share."(3) *Commentary*—The term 'Jātyandha' denotes the incurability of the blindness and not its existence from birth. 'Idiot' means 'one who could not discern between himself and others.' By the term 'Nirindriya' are included the lame and the like who are incompetent to perform the duties enjoined by the Srutis and the Smritis. 'All these' means 'the impotent and the rest.' 'Without stint' means 'for

(1) Cole. Dig. Vol. II, 423, CCCXVIII.
(2) Brihaspati, Chap. XXV, 42—45.
(3) Manu, Chap. IX, 201—203.

life.' The term '*klībāthīnām*' means 'persons enumerated in the text, *klība* excluded; for an impotent man is incapable of procreating. Prakāsakarā, however, holds the opposite view. He says that the term *klība* means 'a person suffering from impotency due to causes which may subsequently be counteracted.' The word '*tantu*' means 'offspring.'

Yājnavalkya says: "The outcast, his son, the impotent, the lame, the insane, the idiot, the blind and others, such as persons suffering from incurable disease, take no shares but are entitled to be maintained."(1) *Commentary*—'His son' means 'the son born after he became an outcast.' 'Idiot is one whose mind is vacant.' "Incurable diseases," such as leprosy, etc., for which there is no remedy. The word '*Ādi*' includes all persons enumerated by other sages as entitled to no shares but only to maintenance.

Suspecting that the exclusion from inheritance of the impotent and the like may be argued to extend even to their sons, Yājnavalkya says: "The *aurasa* and the *kshetraja* sons of these, if themselves free from blame, share in the inheritance, and the daughters of these should be maintained so long as they are not provided with husbands."(2) The same author propounds the following rule with respect to the wives of the impotent, etc.:—"The sonless wives of these, if virtuous, should be maintained. But such of them as are unchaste or adverse to their husbands should be driven out."(3) *Commentary*—The term 'adverse' contemplates the doing of such acts as administering poison and not the sowing of family dissensions.

Narada says: "One hostile to his father, degraded, impotent or expelled from caste for heinous offences, shall not share in the inheritance, even if he be an *aurasa* son. How could he, if he were only a *Kshetraja*? Persons suffering from chronic or acute complaints, the idiot, the insane, the blind and the lame need only be maintained at the expense of the family; but their sons take their shares."(4) *Commentary*—He who hates his father is the enemy of his father. Such hatred terminates in compassing the death of the

(1) Yājnavalkya, Chap. II, 140.
(2) Yājnavalkya, Chap. II, 141.
(3) Yājnavalkya, Chap. II, 142.
(4) Narada, Chap. XIII, 21 & 22.

father who is alive and in refusing to offer for the benefit of his soul libations of water, etc., when he is dead.' 'One expelled from caste for heinous offences' means 'one who having been found guilty of regicide, etc., has been outcasted, the ceremony of breaking the pot having been performed.' Prakāsakāra, however, reads 'up papātaki' which means 'one guilty of minor offences.' 'Chronic diseases,' such as consumption, etc. 'Acute diseases,' such as leprosy, etc. 'The family' means 'brothers, etc.'

Devala says: 'When the father is dead, the impotent, the leper, the insane, the idiot, the blind, the outcast, his offspring and the heretic do not share in the inheritance. To these with the exception of the outcast, food and raiment should be given. Their sons if free from blame themselves shall take their fathers' shares."(1) *Commentary.*—'When the father is dead' means 'even though the father be dead.' The term '*Linghi*' (heretic) means 'one who greatly pretends to observe vows.'

Vishnu says: "Outcasts, eunuchs, persons afflicted with incurable diseases or deficient in organs do not receive shares. They should be maintained by those who take the inheritance. Their *aurasa* sons take shares, but not the sons of outcasts." (2) *Commentary*—The sons of the outcast born after the commission of the offence which entailed such degradation or begotten upon women of superior castes do not receive a share, not even in the wealth of their grandfathers. '*Riktagrahinah*' means 'of him who takes the share.'

Baudhayana says: "Those who are unable to manage their own business should be supported by giving food and raiment, such as the blind, the idiot, one immersed in vice, the diseased and those who have no duties to perform; but not the outcast or his offspring."(3) *Commentary*—'Those who have no duties to perform' means 'those who are not entitled to perform acts of virtue, sacrifice, etc.; for it is declared, "Wealth is created for sacrifice. Therefore it must be given to persons who are competent to perform virtuous acts and not to women, fools or vicious men." As all intercourse with the outcast and his offspring is prohibited, even maintenance shall be refused them.

(1) Cole. Dig., Vol. II, 426, CCCXXI.
(2) Vishnu, XV, 32, 33, 34 and 35.
(3) Baudhayana, II, 2, 3, 37-40.

Vasishtha says: "And those who have entered a different order do not share in the inheritance."(1) *Commentary*—'A different order' means 'any order other than that of a *grihasta* or a householder.'

Gautama says: "The idiot and the eunuch should however be supported; the male issue of an idiot deserves a share. Sons begotten on women of higher castes by men of lower castes should be regarded as sons of a Brahmin by a Sudra wife."(2) *Commentary.*—The word 'deserves' indicates that the son of the idiot will receive a share if he is entitled to it in his own right and not because of his being the son of the idiot. By the expression 'like the son by a Sudra wife' it is meant that the sons of a *Pratiloma* connection if doing service to the father should be maintained like the son of a Brahmin by a Sudra wife.

Kātyayana says: "The paternal wealth will not go to the son of a woman improperly married or born of a woman of the same *gōtra* or to one who having entered the religious order reverts to the householder's. The son of the woman married improperly if he be of the same caste with the father and the son of a wife of a different caste but properly married take the inheritance. The son of a woman begotten by a husband of inferior caste is not entitled to inherit. Food and raiment without stint should, it is considered, be given him by his relatives. In default of them, he may inherit the paternal wealth. But his relatives shall not be compelled to give him any wealth which is not his father's."(3) *Commentary*—'The son of a woman improperly married' means 'son of a woman not of the same caste with the husband and married in violation of the rules enjoined by the Shasters with regard to the marriage of maidens of different castes'; for this very author in the next portion of the passage lays down that the son born of a wife of the same caste though improperly married is heir to the paternal wealth. 'Woman of the same *gōtra*' means 'woman of the same *gōtra* married.' If the son of the woman improperly married be of the same caste with the father, then he is certainly heir. Similarly the son born of a wife of a

(1) Vasishtha, Chap. XVII, 52.

(2) Gautama, Chap. XXVIII, 43-45.

(3) Cole. Dig., Vol. II, 439, CCCXXXVII.

different caste but properly married is also heir. But the son of a woman begotten upon her by a husband of inferior caste is no heir. It is to this son alone that food and raiment should be given. If there be relatives, then they should give him food and raiment without stint. In the absence of relatives, he may himself take that wealth. But where his relatives had inherited wealth which was not his father's, then they should not be compelled to give him even food and raiment.

Brihaspati says: "The younger brothers whose initiation ceremonies have not been performed shall be initiated by their elder brothers out of the common paternal wealth."(1) *Commentary*—The form '*Yaviyasah*' is an *Arsha* substitute according to some for '*Yaviyamsah.*' Others hold that it is the genitive case of '*Yaviyan.*' In the result, the two views do not lead to any difference.

Vyāsa says: "The uninitiated among them should be initiated by their elder brothers out of their paternal wealth, as also the unmarried daughters in due form."(2) *Commentary*—The initiation of the unmarried is their marriage.

Nārada says: "The initiatory ceremonies of brothers whose initiatory ceremonies had not been duly performed by their father should be performed by their brothers out of their paternal property. Or if there be no paternal wealth, the initiatory ceremonies must invariably be performed by contributions from the shares of brothers whose initiatory ceremonies had been performed."(3) *Commentary*—The initiatory ceremonies here contemplated are those from *Jātakarma* to *Upanayana* inclusive.

Devala says: "Nuptial portions should be given to unmarried daughters out of the paternal wealth. The daughter virtuously begotten inherits like the son the wealth of the sonless deceased." (4)

Yājnavalkya says: "Brothers whose initiatory ceremonies had not been performed should be initiated by others already initiated; and the unmarried sisters also by giving a fourth part of their brothers' shares."(5)

(1) Brihaspati, Chap. XXV, 21.
(2) Cole. Dig., Vol. II, 297, CXXV.
(3) Nārada, Chap. XIII, 33 and 34.
(4) Cole. Dig., Vol. II, p. 296, CXXIV.
(5) Yājnavalkya, Chap. II, 124.

Vishnu says: "He should marry unmarried sisters in a manner suitable to his wealth."(1)

Manu says: "Let the brothers give to unmarried sisters portions out of their own respective allotments, each a fourth of his own share. Those who refuse to give shall be degraded." (2) *Commentary*—The meaning here is not that every brother should give a fourth of his own share; but the meaning is that the daughter should be given for defraying the expenses of her marriage a fourth of the share which a son of the caste with her would be entitled to under the circumstances. It, therefore, follows that out of the four shares to which the son of a *Brāhmanee* wife is entitled and out of the three shares which *Kshatriyas* are entitled to, a fourth share should be given. Here as many texts speak of a fourth share, a fourth share alone shall be given, the object being the marriage sacrament. The rule of Vishnu as to the giving of a fourth share should be understood in this light. Kalpataru, Prakāsa and Mitākshara also concur in this view. The view of Halāyudha and others is that in the light of the text of Vishnu, the rule that a fourth share should be given means by implication that as much should be given as may be needed for the sacrament. This is but reasonable, seeing that the performance of the sacrament is expedient.

Kātyāyana says: "A fourth share is ordered to unmarried daughters and three shares to sons. But where the property is inconsiderable, daughters are declared entitled."(3) *Commentary*—'But where, etc.,' means 'when the fourth share is small and more money is required for the sacrament, the unmarried daughters have a right to as much money as may be needed for the performance of the sacrament.' Therefore it follows so much money alone even when taking it out of his own share should be given by the brother in view to the sacrament; as also the *Stridhana* of the mother even while she lives.

Sankha and Likhita say: "Where partition is made, the unmarried daughter takes her own ornaments as also the *Stridhana*

(1) Vishnu, Chap. XV, 31.
(2) Manu, Chap. IX, 118.
(3) Cole. Dig., Vol. II, 297, CXXVI.

given to her mother at her nuptials."(1) *Commentary*—'Her own ornaments,' *i.e.*, anklets etc., the unmarried daughter takes.

Baudhāyana says: "The daughters shall take the ornaments of their mother usually given her or anything else given to her."(2) *Commentary*—This means that the daughter takes ornaments given to her mother during nuptials as also anything else but ornaments given during nuptials.

Again Baudhayana says: "The Srutis declare that women deserve no share; because they are considered weak and portionless."(3) *Commentary*—Prakāsa says the word '*Nirindriya*' means 'devoid of strength.' '*Adāya*' means 'portionless.' This rule applies to all women except those who are allowed a share.

Here ends the Chapter on 'Persons excluded from Inheritance.'

S. SITARAMA SASTRI.

(1) Cole. Dig., Vol. II, 299, CXXIX.
(2) Baudhayana, II, 2, 3, 43.
(3) Baudhayana, II, 2, 3, 46.

NOTES OF INDIAN CASES.

Tirupati Raju *v.* Vissam Raju, I. L. R., 20 M., 155. We are not quite sure of the correctness of the decision in this case. An inter-pleader suit by the Secretary of State to determine which of two persons was entitled to the payment of money due as compensation for land taken under the Land Acquisition Act does not in terms fall within any of the clauses of the second schedule to the Provincial Small Cause Act detailing the classes of suits exempted from the cognizance of the Small Cause Court. Cl. 14 speaks of a suit to recover from a person to whom compensation has been paid under the Act. In the case under consideration there was no payment prior to suit and the suit was one to determine the person who was entitled to it. Cl. 11 does not seem to apply either, for it was a suit to determine which of two persons was entitled to the money though that determination might depend upon their title to land. It might with equal force have been argued that a suit for damages for trespass to land fell within Cl. 11 when the title was disputed, or the action for damages was really brought for the purpose of determining the question of title to land. If we go by the strict letter of the Statute there seems little doubt that the inter-pleader suit in the present case is cognizable by the Small Cause Court. There is nothing

in the nature of an inter-pleader action to take it out of the category of suits tried by the Small Cause Courts.

Puthiandi Mammed *v.* **Avalil Moidin,** I. L. R., 20 M., 157. We do not see why a transfer of a decree is incomplete until recognized by a court. An assignee in writing of a decree may execute the decree at the discretion of the court. But whether the court allows him to execute the decree or not, the property in the decree passes to him from the moment of assignment. The fact that somebody else attached the decree as the property of the assignor cannot enable the assignee to treat the case as one of failure of consideration entitling him to sue for the recovery of the money paid. From the statement of facts, there does not appear to us to have been anything wanting on the part of the assignor to complete the assignment. The attachment by a stranger after the assignment appears to be invalid.

Venkatasubbaraya Chetty *v.* **Zemindar of Karvetinagar,** I.L.R., 20 M., 159. The learned Judges in this case hold that where a material irregularity in the conduct of a sale is established and there is substantial loss, the Court may infer as a matter of fact that the irregularity caused the loss and set the sale aside under S. 387. It has been authoritatively laid down by the Privy Council that the applicant must show that he has sustained loss by reason of the irregularity. See *Olpherts* v. *Mahabir Pershad Singh,* 10 I. A., 25, and *Arunachellam Chetti* v. *Arunachellam Chetti,* 15, I. A., 171. But we do not suppose that this view precludes the inference in a particular case that the injury being shown and the irregularity, it was the result of such irregularity.

Mallikarjuna *v.* **Sri Devamma,** I. L. R., 20 M., 162. We are glad of this decision of the Privy Council that in the case of heriditary trustees one trustee succeeding another has not to take out succession certificate to collect debts due to the predecessor.

Suba Singh *v.* **Sarafraz Kunwar,** I. L. R., 19 A., 215. This decision of the Full Bench appears to us to decide an important principle of Hindu Law, of the preference of the whole blood to the half blood in succession. There can be little doubt after the elaborate discussion the question has undergone as to the correctness of the decision at which the Full Bench has arrived. The decision in *Samat* v. *Amra,* I. L. R., 6 B., 394, appears to be distinguishable, for that is a case of the representative of the half blood being nearer in degree.

Rani Kano Dai *v.* **B. J. Lacy,** I. L. R., 19 A., 235. Chief Justice *Edge* and *Blair,* J., lay down that a money decree-holder against a

sonless separated Hindu cannot proceed to recover the money from the rents and profits of her husband's estate in her hands. It is conceded that he can proceed against the *corpus* of the estate. The income of that estate is no doubt at her absolute disposal and she is not bound to add the unexpended balance to the *corpus*. But the estate comes into her hands burdened with the debt, and the accretions to that estate would seem to us to be liable to the same burden as the estate itself.

Bitto Kunwar *v.* Kesho Prasad Misr, I. L. R., 19 A., 277. A point of some importance is disposed of in this judgment of the Privy Council. A judgment in a prior action between one of the parties and strangers had held that the will had been revoked. This judgment was considered by their Lordships of the Privy Council to be evidence of the revocation in a subsequent case. The question is one of considerable difficulty, but it is disposed of summarily with the remark that the judgment is evidence. It is difficult to bring it within any section of the Evidence Act and there is considerable conflict of judicial opinion in India. Such a question deserves to be more fully dealt with than has been done by their Lordships.

Dhiraj Singh *v.* Mangha Ram, I. L. R., 19 A., 300. With great respect to the learned Judges who decided this case, we are inclined to doubt its correctness. A widow borrowed debts for legal necessity. Is the creditor entitled to sue the reversioner after the widow's death for recovery of the debt from the estate which has passed from the widow to the reversioner. Their Lordships appear inclined to concede that if the widow had mortgaged the estate, it would be liable in the hands of the reversioner. Otherwise they consider that the debt is borrowed on the widow's personal security, and the estate in the hands of the reversioner would not be liable. The widow has two capacities, one as representative of the estate and the other her own personal capacity. It is competent to her to borrow a debt in either capacity just as it is competent to the manager of a Hindu family to borrow a debt for purposes binding on the family or for his own purposes; and although the debt be simple it would be competent to the creditor to proceed after the manager's death against the family property in the hands of the survivors or the personal assets of the deceased according to the nature and character of the debt. It appears to us similarly competent to the creditor of a widow, no matter whether the debt is a simple debt or a mortgage debt to proceed against the reversioner or the representatives of her individual estate according as the debt was for justifiable necessity or for her own private purposes. We are inclined to agree with the

decision in *RamcoomarMitter* v. *Iohamoyi Dasi*, I. L. R., 6 C., 36. Where, however, it is clear that the loan was contracted upon the widow's personal security alone, it will be competent to the creditor to proceed only against her representatives irrespective of the character of the debt.

SUMMARY OF RECENT CASES.

Lease—Covenant running with the land.

White *v.* Southend Hotel Company. [1897. I. Ch. 767 C. A.]

A lease of a hotel by a wine merchant for thirty years at an annual rent of £ 1,500 contained a covenant by the lessee that he shall not, during the continuance of the lease, buy or sell any foreign wines on the premises except those supplied by or through the lessor or his assigns, in consideration whereof the lessor was to allow an abatement of £ 75 from each quarterly payment of rent; the abatement was to cease if the lessee was to break the covenant. The covenant was not wide enough to include the assigns of the lessee. The lessor died during the term and the plaintiffs were assignees from his executors; and the lessee assigned his lease to the defendants. The defendants claimed that so long as they continued to buy their wines from the plaintiffs, they were entitled to a deduction of rent according to the stipulation. The plaintiffs, on the other hand, insisted that the covenant was a personal covenant with the defendants' assignors.

Held: by the Court of Appeal that, notwithstanding the omission of the word "assign," the burden of the covenant ran with the tenant's interest so as to bind the assignee, although not named.

Bankrupt's estate—Void and voidable—Boná-fide purchaser.

In re Caster and Kenderdine's Contract. [1897. I Ch. 776 C. A.]

A. derived title to certain property under a voluntary settlement executed by the owner of the property who however became a bankrupt immediately after. A. sold the property to a *boná-fide* purchaser for value. The purchaser came to know, after the sale to him, that the original conveyance to his vendor A. was liable to be set aside under S. 47 of the Bankruptcy Act of 1883 (46 and 47 Vic. c. 52). He therefore refused to complete the purchase on the ground that the vendors cannot give him a good title. The 47th section of the Bankruptcy Act runs

thus:—"Any settlement of property not being a settlement made before and in consideration of marriage, or made in favor of a purchaser or incumbrancer, in good faith and for valuable consideration ....
...............shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in bankruptcy."

Construing this section, the Court of Appeal held, that the word "void" in the section only meant 'voidable,' so that, if before the time the settlor becomes a bankrupt and his estate rests in the trustee in bankruptcy, it is sold to a *boná-fide* purchaser for value, such purchaser will have a good title against the trustee.

Cf. S. 24 of the Insolvent Debtors Act of 1848 (11 Vic. c. XXI) upon which also a similar construction ought to be put.

Trade name—Intent to deceive—Injunction—Account of profits.

Saxleher *v.* **Apollinaris Company** [1897, I., Ch. D., 893, per *Kekewich*, J.].

The plaintiff had been selling certain Hungarian bitter waters under the name "Hanyadi janos." The defendants were his agents in the United Kingdom, and through their exertions the waters had acquired an extensive popularity and in the market the term "Hanyadi" had come to indicate solely the plaintiff's waters. The defendants began to sell some other bitter waters recently on their own account, and this they styled "uj Hanyadi," or new Hanyadi, and to this they attached a small yellow label with a red diamond. This label had been for so long a time affixed by the defendants to the plaintiff's waters sold by them, that the public had come to believe that any water not having this label was not genuine Hanyadi water. The plaintiff sued for an injunction ordering the defendants to desist selling their waters with the above marks and for an account of profits. *Kekewich*, J., held that the plaintiff was entitled to the reliefs asked for except the one for the removal of the yellow label, as that was intended only to denote waters sold by the defendants, and was not in itself when not coupled with "Hanyadi" calculated to deceive.

The principle of law that "Nobody has any right to represent his goods as the goods of somebody else" is perfectly general, and has no limit as regards name, origin, honesty of manufacture or sale, or otherwise.

If in any case the defendants' goods on the face of them, and having regard to surrounding circumstances, are calculated to deceive, no evidence is necessary to prove an intent to deceive as it must be taken that a man intends the natural and reasonable consequences of his acts. If on the other hand such a comparison with the aid of the surrounding circumstances is insufficient, then evidence *aliundee* of the intent to deceive may be let in.'

The right to use and protect what is styled a common law trade-mark is not identical with the right of an individual in a registered trade-mark, such as a patent. The latter is a species of property. It is doubtful whether in the case of a common law trade-mark an order for an account of profits should necessarily follow an injunction.

Arbitration, contract to refer to—Bar to suit.

Renshaw v. Queen Anne Mansions Company, [1897, I, Q. B. D., 662, C. A.]

By a contract with the defendants the plaintiff had agreed to serve them for a period of five years, and the defendants had agreed to employ the plaintiff for that period, unless the plaintiff should misconduct himself so grossly as to justify them in dismissing them previously to its expiration. The contract further provided that if at any time any dispute, difference or question should arise between the defendants and the plaintiff touching their or his rights and liabilities under the agreement, it should be referred to arbitration. Before the expiration of the period of five years provided by the agreement the defendants dismissed the plaintiff for some alleged misconduct. The plaintiff then sued the defendants claiming damages for wrongful dismissal, notwithstanding that the defendants were ready and willing to refer the whole matter to arbitration as per terms of their agreement.

The plaintiff contended that the defendants, by dismissing the plaintiff without referring the question whether he was guilty of misconduct to arbitration, had broken the contract, and that consequently the agreement to refer was no bar to the suit.

Held by the Court of Appeal that the two questions whether the plaintiff was guilty of misconduct and whether the defendants had therefore a right to dismiss him were within the terms of the agreement to refer which was capable of being enforced under section 4 of the Arbitration Act of 1889.

Contract in writing—Envelope with letter inside.

Pearce *v.* Gardner, [1897, I. Q. B. D., 688, C. A.]

The plaintiff sued the defendant for damages for not carrying out a contract to sell a quantity of gravel to the plaintiff. The defence was that either under section 4 of the Statute of Frauds or under the Sale of Goods Act, 1893, the contract in question and the names of the parties must be in writing. In this case there was a letter from the defendant signed by him, but commencing with the words "dear sir" and containing no name to indicate to whom it was written. It was proved at the trial that this letter containing all the terms of the contract, and signed by the defendant, reached the plaintiff in an envelope directed to him.

Held (by the Court of Appeal) that the letter and the envelope can be taken together to constitute the memorandum required—Per *Lord Esher*, M. R.: "The common sense of the matter seems to me to be that the envelope and the letter within it were sent together and may be taken together; so that the effect is the same as if the name of the plaintiff had been written at the foot or indorsed on the letter."

JOTTINGS AND CUTTINGS.

We beg to acknowledge with thanks the following publications:—

The Provincial Small Cause Courts Act and Succession Certificate Act by C. V. Visvanatha Sastri, B.A., B.L.

The Albany Law Journal for July (*in exchange*).

The University Law Review for June and July (*in exchange*).

The Educational Review for June and July (*in exchange*).

The Calcutta Weekly Note for July (*in exchange*).

The Green Bag for July (*in exchange*).

The Allahabad Weekly Notes from January to July (*in exchange*).

The Canda Law Journal for June (*in exchange*).

The Canadian Law Times for June (*in exchange*).

A Fool Legislation.—A bill recently introduced in the Illinois Legislature provides that "any newspaper found guilty of unduly eulogising any person or persons, thus falsely building for such person or persons a reputation without merit, thereby misleading and deceiving the public, shall, after ten days' notice served in writing upon the publisher or publishers of said newspaper of the false and misleading character of said eulogy, make a retraction or correction of said eulogy, in manner

and place as conspicuous as was its original publication, for three succeeding issues of said newspaper. This Act shall not apply to deceased persons, nor be operative against funeral orations nor obituary notices."

As an example of pure and unadulterated fool legislation, this is certainly entitled to the first premium:—*The Albany Law Journal.*

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Assexualization of Feeble Minded and Criminal Persons.

Another piece of proposed legislation, though perhaps not properly classed with the above, is so radical, not to say revolting, that it should be thoroughly discussed. This bill, known as House Bill No. 672, was introduced by Mr. Edgar, in the Legislature of Michigan, and is entitled "A bill to provide restrictions relative to persons, inmates of certain State institutions, that such inmates shall cease to be productive, providing rules and modes of procedure to restrict the propagation of their kind." The bill is so important in some of its provisions that it is given herewith entire.

"Section 1. *The people of the State of Michigan enact,* that all persons inmates of the Michigan home for the Feeble Minded and Epileptic and all persons who shall hereafter become inmates of said Home for the Feeble Minded and Epileptic, that such and every person confined in said institution and before he or she is discharged shall be caused to submit to an operation that causes assexualization, that such persons shall cease to be able to produce their kind."

"Section 2. All persons who shall have been convicted of a felony a third time and so stated by the court, the first or second conviction having been committed in this State or some other State of the United States, upon conviction and sentence to a Michigan State Prison, all of such persons so convicted and sentenced at a time prior to the expiration of such known third sentence shall be caused to submit to an operation that causes assexualization and stops their ability to produce their kind."

"Section 3. The superintendent, warden or other person having charge of such home for the feeble-minded and epileptic and such prisons as shall contain such persons as provided for in Ss. 1 and 2 of this Act, the medical superintendent in charge of said institution shall perform such operation, or if from inability at the time he may call to perform or assist in the performance of the same any physician or surgeon of this State. The superintendent, warden or other person in charge of said

institution may pay to such operator a sum not more than twenty-five dollars for each and every operation so performed, and in no case where the operation is performed by the physician employed regularly by the within-named institution shall there be paid any extra compensation."

"Section 4. In each and every case before such operation shall be performed, if the person be feeble-minded or epileptic, confined within a prison in this State, the matter shall be presented in writing to the Board of Control of such institution, wherein it shall be shown that such operation would benefit the subject physically and morally, or that it is necessary as a restrictive measure to prevent propagation of his kind in case the subject is discharged from the institution. The Board of Control shall, after being satisfied of the advisibility of such operation, authorize the medical superintendent to perform the same, after first giving notice in writing to the parents or guardian of such person at least ten days before such operation."

"Section 5. That whoever shall have been convicted of the crime of having ravished a child or woman while upon the streets of any city, village, public highway, or any other place within this State, it shall be the duty of the Judge making such sentence to include in such sentence that within one year after being confined in such prison, an operation which causes assexualization shall be performed as provided in Ss. 3 and 4 of this Act."

"Section 6. The penalty for non-compliance of this Act shall be just cause for removal and forfeiture of the position of such superintendent, warden or other person named in this Act."

The measure will undoubtedly provoke much discussion, and even leading penologists are likely to disagree as to the wisdom and propriety of enacting it into law.—*The Albany Law Journal.*

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Are there too many lawyers:—This is the happy commencement season. Institutions of learning all over the land are turning out the graduates, armed with the much prized diploma, and more or less thoroughly equipped to fight the battle of life. To drop the ideal and the theoretical and wrestle with the practical is one of the first lessons to be learned in the great school of experience. Neither law schools nor any other institutions of learning can change a man's nature any more than they can add to his stature. They can only instil into his mind correct principles and habits of thought. Their principal function is to

teach him how to learn, to point him to the fountains of knowledge, and to show him the best method of acquiring it. No school can guarantee the success of its graduates, for that depends wholly upon his own energy, ambition, natural aptitude and perseverance. It is perhaps true that in no profession are the misfits so numerous, and in none is their condition so hopeless, as in the legal profession. That that profession is overcrowded no one will attempt to deny. We are told, on good authority, that there are over 8,000 lawyers within the boundaries of Greater New York. How they all make a living is one of the unsolved mysteries. The prizes of the profession are alluring, but they are few. Where one lawyer succeeds in acquiring a large fortune, hundreds merely eke out a precarious living, and many have to resort to questionable, if not absolutely criminal, practices in order to keep body and soul together. Proof of the terribly congested condition of the profession is easily given. Here are a few advertisements taken at random from the columns of a New York legal publication:

Wanted—By attorney, 15 years' practice, position in law firm as managing clerk, or assistant in trial of cases; will take $6 per week.

A Bright, Middle-aged Lawyer (notary), thorough in practice and procedure, desires managing clerkship; salary moderate.

Clerkship Wanted.—Managing or assistant; competent attorney; college and law school (Columbia); highest references; moderate salary.

Wanted.—Bright young attorney (admitted); familiar with city practice; in law department mercantile agency; salary to begin, $5.

Wanted—*A Young Attorney*, with six years' experience, good references, desires position; salary, $10.

Wanted.—Position as law clerk or stenographer, by lawyer, eight years at bar; highest references; salary, $8 per week.

Here we find middle-aged as well as young lawyers, some of them with college and university training, seeking positions at the starvation wages of $5 per week! Could there be stronger proof given that there are too many lawyers—so-called? But be it remembered that it is just as true now as it ever was, that there is always room at the top. There are not too many good lawyers, but too many professional misfits, too many men who have mistaken their vocation. Thousands of young men who are struggling to win a precarious living at the bar could doubtless have done well, if not amassed a competence and proved a positive benefit to society, in some trade. Undoubtedly one of the greatest causes of this congestion of the professions is the widespread notion that manual

labor is unworthy, and, in a sense, degrading—a mischievous idea which it ought to be one of the purposes of every institution of learning in the land, as well as of every parent, to stamp out. It is more than unfortunate—it is almost a crime—to spoil a good mechanic to make a failure of a lawyer. This is not at all an argument against law schools, or law departments of universities. The ranks of the legal profession must be recruited, and no better method of doing this has been devised than the agency of well-organized and thoroughly equipped law schools, in conjunction with stricter and more practical bar examinations. Happy, then, is he who early discovers that he has mistaken his calling, and leaves the profession for which he is not fitted.—*The Albany Law Journal.*

The same may be observed of the state of the profession in this country too. Manual labor is considered degrading and the higher the caste the more it is felt to be so. As soon as a youth takes the Degree of Bachelor of Arts, he is in a fix as to what course he is to adopt. The utmost that he can get, if he has some wealthy or influential relatives to back him up, is a pittance of Rs. 15 a month. He naturally wishes to postpone the day of decision. There is the law-course which takes three years to be gone through and he finds that that will remove his anxiety for some time; and regardless of anything that qualifies one for the profession, aptitude, wealth and strength to persevere even at the risk of starvation, he joins the law class and finds himself in the plight in which his American brethren are described to find themselves in.—ED.

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Wise Words to Young Lawyers.

The following extract is from an address delivered by Judge Herrick of Albany to the graduates of the Albany Law School and we commend it to the careful perusal of every young lawyer who seeks to win place and profit in his profession.

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I will assume, however, that you have determined upon your career, have passed your final examinations, and been licensed to practise. Do not think your time for study has ended, and that you have only to wait for business, and do not be discouraged because clients do not flock to your office. Some one has said that it is one of the merciful dispensations of a Divine Providence that a young lawyer's clients are few and far between, in order to give him time to learn something about his profession.

While waiting for clients to come is the time for earnest thought and study. It is the period in your life for "moderate living and high thinking." It is the time to lay broad and deep the foundations of your professional career, it is the time of waiting; it affords opportunities to the study of law. It will be time enough to study cases when your clients come. Make the most of this time of waiting; the opportunities it affords to equip yourself for the higher branches of the profession, and its great responsibilities will never come back to you.

Do not make the mistake of thinking that it will be time enough to equip yourself when the case comes and the occasion arises for the use of your knowledge. It has frequently happened that the case and the opportunity has been presented to a lawyer to establish his reputation upon a firm foundation, but from lack of a broad knowledge of his profession he has failed to realize its possibilities, and his chance has gone, never to return.

* * * * * * * * * *

Do not, in your efforts to fit yourself for your future career, confine yourself merely to the law; the lawyer whose knowledge is confined solely to that to be found between the covers of law books is only partially fitted for his profession. He may become a sharp, keen, acute practitioner, but always a narrow one; he may know the letter of the law, he will not fully realize its spirit; and upon large questions will fail to meet the demands made upon him. There is no branch of knowledge that comes amiss to the lawyer.

Everything that concerns the affairs of men sooner or later touches the law, and needs the lawyer.

Of course, it is not to be expected that you will master all branches of knowledge, or all professions. The human mind is not adequate to such a task; and when you get a case that requires special scientific or professional knowledge, you can secure the assistance of a specialist, but it may well be that without any general knowledge of a subject you will not appreciate that it enters into your case, or realize that you need the assistance of a person learned in that particular branch of knowledge until it is too late.

Let the creation of your law library go hand in hand with that of a general library.

But in your study of books do not become a recluse. The study of men is of just as much importance as the study of books.

Learn to know them and their pursuits, and all the phases of human nature. Acquire a knowledge of business and of public matters. The successful lawyer must, in these days, be a man of affairs.

The all-round lawyer must not only be a warrior to fight his client's battles, he must also be an adviser, a negotiator and diplomat.

The preparation, trial and argument of cases is but a portion of a lawyer's business. He must be prepared to advise in business affairs, to negotiate the settlement of controversies. The reputable and skilful lawyer does not promote, but composes, contentions.

Some of our greatest and most prosperous lawyers seldom or never appear in court. Great legal victories are frequently won, not in court, but in the office, where diplomacy and skill in handling men and measures preserve reputations, save families from disruption, keep great business houses from wreck and ruin, harmonize conflicting and contending interests, and make possible the combinations of men and capital necessary to carry forward the great commercial enterprises of the age.

The things require, not only legal learning and ability, but a knowledge of men and affairs, and frequently a fineness as delicate as the touch of a woman.

It is lawyers possessing these qualifications that are sought by the great corporate and business interests of the country.

These interests are generally in the hands of men of a high order of ability; when they require legal assistance they want the best. They possess the intelligence to understand and appreciate ability in others, and they are willing to pay for it. The result is that our best legal talent is rapidly drifting into the almost exclusive employment of the great corporate and commercial interests of the country.

I have advised you to acquire a knowledge of public affairs. I mean something more than merely reading about them. Take an active part, so that you will acquire a practical knowledge.

First, because good citizenship demands it. Every citizen owes some service to the State.

The better trained and educated a man is, the higher that duty becomes, and the more valuable the service he can render.

In this country the man who does not take an interest in public affairs is not a good citizen, and is not fit for public service either upon

the bench or elsewhere. The more intelligent and active an interest he takes, and the more vigorous and robust a personality he becomes, the better fitted he is for high positions of public trust and honor.

Second—Take a part in public affairs for your own benefit. It enlarges your ideas; it makes you a broader man. It gives you a new and larger conception of law and the statutes.

It will give you a greater knowledge of men and of the springs of human action, which will be invaluable, particularly in the trial and argument of cases.

It will also greatly enlarge your acquaintance from which to draw business.

But be careful, very careful, not to become too much absorbed in politics; it is a seductive pursuit, and its pleasures and enjoyments continue to allure long after all other amusements have become stale and flat, and unless held firmly in hand it is well calculated to wreck your professional career. The law is a jealous mistress, and will not permit devotion to any other shrine.

Still, public service and high legal standing are not incompatible.

Almost every Chief Justice and Lord Chancellor of England, and most of the Judges of the first class in this country, have taken an active part in public affairs before their elevation to the bench, and such participation has only the better qualified them for their high duties, and rarely, very rarely, has partisanship swayed their rulings.

Lawyers stood in the forefront of every struggle for English liberty, and in our own country, from Adams and Otis to Lincoln, have been leaders in every battle for human rights, and are still rendering valuable, voluntary, unbought service to the State and nation.

While, therefore as good citizens, as well as for your own advancement, I advise you to take an active part in public affairs, do not do so for the sake of obtaining office.

Take no office except strictly in the line of your profession, unless under very exceptional circumstances. Except to escape starvation, do not seek for or accept any political clerkship. Do not be a seeker for political business. If it comes to you voluntarily, is honorable, and the compensation fair, well and good, but do not seek it. In doing so other and more lasting clientage is lost; you become more and more dependent upon it, and I know of no more contemptible figure in the profession than the legal political bone hunter.

But let us return to our studies. While fitting yourself for your professional career, do not fail to qualify yourself to present cases to courts and juries. Of course, much of that ability comes only from practice and experience, but much also can be acquired by previous thought and preparation.

It has always been a matter of surprise to me that in the two professions, the law and the ministry, where the ability to present their views in the strongest possible manner is of such great importance, so little attention is apparently given to the art of public speaking. There is an impression, I know, with many people, that oratory has ceased to be effective. This, I think, is a mistake. The style of oratory which is effective has perhaps changed; the people are better read and more intelligent, and it requires greater knowledge and skill to convince or move them, but clear and persuasive oratory is just as effective as ever.

It has been said "the orator is born, not made," and while you may not have that heaven-born fire and genius, still much may be done by study and practice to make you a powerful and persuasive speaker.

Study to be clear in your statements of law and fact, and bear in mind always that you cannot make a clear statement unless you have a clear and perfect understanding of the matter yourself. Make your statements in clear, precise, simple English; use small words when possible.

In arguments before courts, when you have made a perfectly plain, full and clear statement of the facts, your case is more than half argued.

Avoid all mannerisms and affectations. Speak easily and naturally. The highest art is to conceal the art you are employing.

Speak as if you were dead in earnest, and meant and believed every word you said. In the vast majority of cases there is no occasion for splendid rhetoric or declamatory display ; indeed, they would be out of place.

The advocate who wins the verdicts is the one who make himself the thirteenth juror, and in plain, earnest, simple Anglo-Saxon, with no apparent art of oratory, satisfies the remaining twelve that his side is the right side.

This art was perhaps possessed in the greatest perfection by Scarlet afterwards Lord Abinger, one of the most effective jury lawyers ever known at the English bar. He was a contemporary of Lord Brougham, who had a world-wide reputation as a great orator and advocate. This story is related of them : An English farmer, who had been attending a

circuit, in speaking of the trials that had there taken place and the lawyers engaged, said: Brougham is the man for my money; he is a great orator, an eloquent man, and if I ever get into trouble he is the lawyer that I want." "But," said one of those present, "I see that you decided against Brougham in all the cases he was in, and in favor of Scarlet." "Oh," said he, "that is all right. Scarlet is a nice man, and he chanced to get on the right side in all those cases, and we had to decide with him." Scarlet had made himself the thirteenth juror.

If you expect to become trial lawyer, or to argue your own cases, you must assiduously cultivate this art of public speaking. It is absolutely necessary in those branches of the profession.

It is surprising how few really good trial lawyers we have. I do not speak of first-class trial lawyers, because men of the first class are few and far between in every profession, calling or business; but the moderately good trial lawyer is rare, and there is hardly a bar in the State but what has room for one or more lawyers who can present cases to courts and juries with ability and skill.

I have not the time to give you my ideas as to what constitutes a good trial lawyer, or as to how you should study and practice to make yourself one; I can only say, do not despise the day of small things. Take hold of the smallest cases that are brought to you, and exercise all your skill and arts upon them. Do not refrain from going into the lower courts; make them your training schools. The old country justices' courts were the training schools for the greatest trial lawyers and advocates this country has ever known.

Prepare your cases thoroughly. Make yourself master of all the facts and the law in your case, so that you know more about it than any other human being. Thorough preparation upon both the law and facts is one of the greatest secrets of success.

In preparing upon the law, either to advise your client or for your brief for the court, strive to be intellectually honest—honest yourself. By that I mean, do not permit your desire to assist your client or your case warp your judgment as to principles or color your opinion as to what a case has really decided. Strive to find out what the law really is, not what it is the interest of your client to have it—that is the only way to become a safe adviser.

In starting out in your professional career, be careful and guarded in your conduct towards your brethren in the profession. Do not

acquire the reputation of being a sharp practitioner. Let your simple word be as good as your oath or written stipulation; do not depend upon tricks to overreach, or obtain advantage of your adversary. Be sharp, keen and acute to detect and prevent impositions upon you or your client; but do not depend too much upon mere sharpness or keenness to advance your own causes.

Be absolutely candid with the court; do not attempt to mislead it. Remember you are one of the officers of the court whose duty it is to assist it in ascertaining the truth; it has a right to rely upon you, and will until you prove untrustworthy.

The lawyer who is not candid with the court, who attempts to deceive or mislead it, soon becomes a marked man. He may continue to be treated pleasantly and courteously, perhaps with that extreme courtesy that sometimes marks the lack of cordiality, but his every word and act is watched and scrutinized; nothing is taken upon trust; and while his client is not consciously permitted to suffer, yet his services have become practically valueless to that client.

While it is the duty of the courts to mete out justice irrespective of persons, that applies more particularly to the causes and the clients, and not to the counsel. It is natural that the man of great learning and industry, who understands and thoroughly prepares his cases, who is honest and candid with the court, should have, and deservedly have, great weight with it. Ability and high character are entitled to, and will receive, corresponding weight and consideration in whatever forum they appear.

The man who gains the reputation of being sharp and tricky seldom advances to any high position in the profession, but spends his days as he begins his professional career, to use the words of Sheridan, "picking up small fees and impudence," and never reaches the higher grades of the profession and the accompanying emoluments and honors.

In all your acts and dealings so conduct yourselves that you will not be ashamed to have any of them exposed to the full blaze of public scrutiny and criticism.

The profession is much misunderstood, and from time immemorial the lawyer has been the subject of ridicule and abuse, and it is, therefore, so much the more important that, not only in his professional life, but in his daily walk and conduct, he should so conduct himself as not to give just occasion for reproach.

No matter how upright he may be, he cannot escape calumny, but he can avoid just cause for it, and sooner or later the community will recognize the rectitude of his life.

Never commence an action unless you think your client ought of right to succeed. In the defense of an action a different course is permissible, and so long as you do not prevert or suppress testimony, you can properly assist your client in procuring the opinion of the court or jury as to his rights and duties, and not usurp their functions yourself. Every man has a right to his day in court, and the right of counsel to present his side of the controversy.

Never lend yourself to any scheme for making money out of any person's lapses from virtue or morality. The only place for the lawyer who assists the blackmailer is to share with him the felon's cell.

While it is the custom of the ignorant and thoughtless to malign and abuse the profession, yet the very persons who do so do not hesitate, when in trouble or difficulty, to fly to some member of the profession which has been the subject of their abuse, and confide their troubles to him, unfold to him the innermost secrets of their lives, and place fame, good name, fortune, and even life itself, in his hands, feeling and believing that the trust will not be betrayed, and that the fidelity of the lawyer thus employed can be absolutely relied upon.

There is no class of men, either professional or otherwise, that have so many, vast and varied interests committed to their fidelity, and where so few betray the trust.

I hope that it is unnecessary to impress upon you the duty of absolute fidelity to your clients.

Lord Brougham, upon the trial of Queen Caroline, made this declaration as to the duty of an advocate to his client:

" An advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and, among others, to himself; is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others."

"Separating the duty of a patriot from that of an advocate, he must go on reckless of consequences, though it should be his unhappy fate to involve his country in confusion."

I think it is the consensus of professional opinion that Lord Brougham, in the heat of conflict and in his desire to let it be known that the defense was not to be intimidated by the king, went too far.

The means and expedients resorted to to save your client must be neither dishonest nor dishonorable; neither must you sacrifice the innocent to save your client or your cause, and your duty as a patriot is superior to your duty as an advocate. With these limitations, it seems to me the definition I have quoted as to the duty of an advocate may be accepted, with this addition, that under no circumstances are you to reveal the confidences of your client without his consent. They are his secrets not yours; and should be regarded as sacred as the revelations at the confessional.

This obligation exists, not only while the relation of counsel and client continues, but after it ceases, and is to be carried inviolate to your grave.

These suggestions, trite and commonplace, to the old lawyer, I trust may be of some little use to you, in calling attention to what you may usefully employ yourself about in the waiting years of your professional life, and also your obligations and duties from the beginning to the end of your career.

In closing, let me say, enter upon your professional career as you should upon the trial of a cause. Having, after careful thought and preparation, determined upon your course, enter it not timidly or half-heartedly, but cautiously and prudently, firmly and fearlessly, and if you do not achieve success, you will, at least, deserve it.—*The Albany Law Journal.*

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Divorce case:—Judge Randolph of Kansas was hearing a divorce case last fall. The witness was the plaintiff, a white-haired man, broken in health and in spirit, and wearing a bronze button in his lapel. The examination was severe and the session monotonous.

"You say your wife abused you; tell us just how," thundered the attorney.

The witness looked appealingly at the Judge.

"Answer the question, sir," was the order from the Bench.

"Well, she said I was an old hypocrite to be proud of my war record. She said all the brave men who went to the war were killed, and that only the cowards and deserters lived to come back, and ——"

"Stop!" commanded the aroused Judge. "This divorce is granted.

The court spent four years in that war —— and the court came back."

The monotony was broken for that day.—*The Albany Law Journal.*

REVIEWS.

The "Provincial Small Cause Courts Act and Succession Certificate Act" by Mr. Visvanatha Sastry, B.A., B.L., Vakil, High Court, Madras. This little book will be found very useful both by practitioners and judges. The notes on the sections are succint and generally accurate. The get-up of the book is excellent. The author, though generally careful to keep in view the distinction between the former Small Cause Courts Act and the present Act, sometimes mixes up the two. At p. 48, for instance, *Ram Joy Moojoomdar* v. *Kedar Narain*, 25 W. R., 75, is quoted as authority for the proposition that a suit to recover from the guardian of a minor rents collected by him, which he did not account for, is not cognizable by a Small Cause Court as the guardian is a *trustee.* Under Act XI of 1865, if the suit was not based on a contract, and was not one for damages, the jurisdiction of the Small Cause Court was ousted; and the soundness of the decision therefore is unquestionable. But it is by no means clear that the word "trust" in clause 18 of the 2nd Schedule to the present Act will include construc-

tive trusts of the nature which alone can be fastened on a guardian. The author might have drawn attention to this distinction. The criticisms of the author of the judgments of the High Courts where he ventures on them are cautious and sound. On the whole, he is to be congratulated on the success of the brochure and we have no hesitation in commending the book to the profession.